

DIRECTOR OF CENTRAL INTELLIGENCE  
**Security Committee**

SECOM-D-338

8 September 1980

MEMORANDUM FOR: Collection Requirement and Evaluation Staff, NFAC

STATINTL ATTENTION:

STATINTL FROM:

Executive Secretary

SUBJECT: Revision of the National Release and Disclosure Policy

REFERENCE: Memorandum for DCI from Deputy Secretary of Defense, dated 27 August 1980, Same Subject

1. This is for your consideration in preparing a DCI reply to the referenced Deputy Secretary's memorandum.

2. There are areas of possible confusion in both the Working Group Report and in the Deputy Secretary's memorandum resulting from questions about the scope of consideration of the enterprise. The questions relate to the definition of terms that appear to be used with great precision in some sections of the Working Group Report and interchangeably in other sections with terms that are neither standard nor identified for restricted use.

a. In his first paragraph, the Chairman of the Working Group states that the task was directed toward consideration of the implications of promulgating a broader NDP, applicable to the release of classified information by all departments of the Executive Branch.

b. State's objection narrowed the scope in State's eyes to technical military information and sensitive compartmented information (SCI). (Para 2 of Report.)

c. The Working Group then "limited its inquiry to the policies and procedures related to the release of classified military information and intelligence." (Para 3 of the Report.)

d. In the fourth paragraph of the Report, the Chairman says that the current NDP governs the release of classified military information and defines it as "that information under the jurisdiction of, or of primary interest to the Department of Defense or its departments or agencies." The NDP also defines CMI (classified Military Information) as including noncompartmented military intelligence.

e. On page 2 second paragraph, the definition of what is not covered by the NDP is given as "e.g. compartmented information and national intelligence."

f. In paragraph 3 of the second page of the Report it is noted that the Working Group is concerned that there is no uniform policy in the Intelligence Community which governs the release of all classified intelligence information.

g. In paragraph 4 of the second page of the Report it is noted that the DCI representatives hold that E.O. 12036 makes the DCI responsible for all intelligence foreign disclosure policy.

h. On page 3 paragraph 2, in its objection to this perception, it is given that OSD representatives contend that E.O. 12036 authorized the SecDef to collect and disseminate intelligence to foreign governments in carrying out the responsibilities of his department and a special responsibility for the release of SIGINT to foreign governments. This section of the Report also notes that DoD's rejection of the idea of removing noncompartmented military intelligence from the scope of the NDP is premised on recognition of a need for disseminating collateral intelligence which relates to military matters of mutual concern to foreign counterparts.

3. The following terms, extracted from above and the Report, are thus never clearly and exclusively defined in the Report:

"classified information"

"technical military information"

"sensitive compartmented information"

"classified military information and intelligence"

"noncompartmented military intelligence"

"all classified intelligence information"

"all intelligence"

"collateral intelligence which relates to military matters of mutual concern to foreign counterparts"

While use over the years may have set unwritten parameters for these terms, they are neither definitive nor objective in the context of this report.

4. Other sources of definition were examined and found wanting because of possible challenge to impartiality or authority. This includes the definition of CMI as that information "under the jurisdiction of" - since this implies that possession is the controlling factor; or "of primary interest to the Department of Defense or its departments or agencies" - since this is open to debate as to the "primary interest." The NFIB Glossary (NFIB 24.1/18 dated June 15, 1978) was set aside as not impartial.

5. The authorities selected are Executive Orders 12036 and 12065.

a. E.O. 12065 section 6-102 states that "classified information means information or material, herein collectively termed information, that is owned by, produced for or by, or under the control of, the United States Government, and that has been determined pursuant to this Order or prior Orders, to require protection against unauthorized disclosure, and that is so designated."

b. E.O. 12036 section 4-206 states that "Intelligence means foreign intelligence and counter-intelligence."

c. E.O. 12036 section 4-205 states that "Foreign Intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities."

6. No specific definition for the other terms were located in E.O. 12036 or 12065, but there is an approximation that may be considered.

"Sensitive Compartmented Information" or "SCI" is a term derived from authorities of E.O. 12065 section 4-2, Special Access Programs, which states in part:

"Agency heads listed in Section 1-201 may create special access programs to control access, distribution and protection of particularly sensitive information classified pursuant to this Order or prior Orders. Such programs may be created or continued ... for matters pertaining to intelligence sources and methods, by the Director of Central Intelligence."

7. The Report raises by implication the question whether there is a difference between "intelligence" and "military intelligence." Both E.O. 12036 and E.O. 12065 are silent on this point. E.O. 12036 implies that there may be some differences; see sections 1-1111 and 4-210(e). Section 4-210 of E.O. 12036 defines the National Foreign Intelligence Program as including CIA programs as well as a number of programs conducted by the Department of Defense.

8. It appears reasonable therefore to accept definitions which provide for a distinction between:

Intelligence "which means foreign intelligence and counterintelligence" and Intelligence "required for the planning and conduct of tactical operations by U.S. military forces."

It is also reasonable to presume that there is an interface between Foreign Intelligence and Tactical Intelligence. The definition of or scope of that interface is not resolvable by reference to Executive Orders 12036 or 12065.

9. However, this should be done in the light of authorities for foreign intelligence matters as set forth in E.O. 12036 sections:

- 1-401 "The National Foreign Intelligence Board shall advise the DCI concerning... arrangements with foreign governments on intelligence matters...."
- 1-601(g) "The DCI shall formulate policies concerning intelligence arrangements with foreign governments, and coordinate intelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments."
- 1-601(i) "The DCI shall ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information and products."
- 1-603 "The Director of Central Intelligence shall have full responsibility for production and dissemination of national foreign intelligence...."
- 1-604 "The Director of Central Intelligence shall ensure that programs are developed which protect intelligence sources, methods and analytic procedures provided that this responsibility shall be limited within the United States to... providing policy guidance and technical assistance to departments and agencies regarding protection of intelligence information, including information that may reveal intelligence sources and methods."
- 1-710 [The senior officials of each of the agencies within the Intelligence Community shall] "protect intelligence and intelligence sources and methods consistent with guidance from the Director of Central Intelligence and the NSC" and shall
- 1-711 "Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence."

10. The NDP Report mentions that OSD representatives contend that E.O. 12036 authorizes the Secretary of Defense to collect and disseminate intelligence to foreign governments in carrying out the responsibilities of his department. This is not exact, and in view of the potential confusion over definitions of terms, the wording of E.O. 12036 Section 1-1102 is noted. It tasks the Secretary of Defense to:

"Collect, produce and disseminate foreign military and military related intelligence information, including scientific, technical, political, geographic and economic information as required for execution of the Secretary's responsibilities."

Section 1-1111 tasks the Secretary of Defense, together with the DCI, to ensure that there is no unnecessary overlap between foreign Intelligence programs and Department of Defense intelligence programs and provide the DCI all information necessary for this purpose.

These two sections of E.O. 12036 clearly provide that the SecDef's unilateral intelligence activities are limited to foreign military and military related intelligence information. Neither section specifies that dissemination is to foreign governments. The interpretation given in the Report would be contrary to a logical assumption that dissemination would be to U.S. elements.

11. E.O. 12036 also addresses authorizations for the Secretary of Defense to utilize certain Defense components in carrying out his responsibilities under the Order. These include the foreign intelligence and counterintelligence elements of the military services. Section 1-1204 provides that these elements' responsibilities include:

"Collection, production and dissemination of military and military related foreign intelligence..."  
[but] "when collection is conducted in response to national foreign intelligence requirements, it will be tasked by the NITC...."

12. The Secretary of Defense is also authorized to use the Defense Intelligence Agency whose responsibilities, as provided in E.O. 12036, include:

1-1201(a) Production or provision of military and military related intelligence for the SecDef, the JCS, other Defense components and as appropriate, non-Defense agencies.

1-1201(b) Provision of military intelligence for national foreign intelligence products.

13. There is no specific provision in E.O. 12036 authorizing the Secretary of Defense to disseminate military intelligence or military related intelligence to foreign governments.

14. Staff Position: Based on a review of extent E.O.s it is the opinion of this writer:

° That there is an identifiable distinction between military intelligence and national foreign intelligence.

° That national foreign intelligence may be defined as that intelligence resulting from tasking by the National Intelligence Tasking Center or funded by the National Foreign Intelligence Program.

° That the DCI has unequivocal responsibility for production and dissemination (including dissemination to foreign governments and international organizations) of national foreign intelligence.

° That the DCI has the responsibility to ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems information and products.

° That the DCI has the responsibility to be responsive to Community members requests for policy guidance concerning intelligence arrangements with foreign governments including dissemination of national foreign intelligence.

° That the DoD has unilateral authority and control, commensurate with responsibilities for protection, over military intelligence and military intelligence related information including the right to provide such information to foreign military counterparts.

° That this authority does not extend to national foreign intelligence produced under tasking of the NITC and funded in the NFIP Budget.

15. Recommendations: It is recommended that you advise the DCI to:

- favorably consider the request of the Deputy Secretary of Defense;
- redefine the concept of national foreign intelligence in terms of NITC and NFIP budget issues;
- strive for the development of standards and procedures governing the release to foreign governments of the newly defined national foreign intelligence; and
- consider the establishment of a central registry where disclosures of national foreign intelligence to foreign governments may be recorded.



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